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OFFICE OF PETITIONS

In re Application of	:	
Steve Doe	:	
Application No. 10/606,131	:	ON APPLICATION FOR
Filed: June 24, 2003	:	PATENT TERM ADJUSTMENT
Atty Docket No. 088245-0105	:	

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b) filed June 20, 2008. Applicant requests that the initial determination of patent adjustment at the time of mailing of the notice of allowance be corrected from zero (0) days to four hundred seventy-five (475) days. Applicant requests this correction in part on the basis that the Office will take in excess of three years to issue this patent. In addition, pursuant to their duty of good faith and candor to the Office, applicant discloses two errors in their favor in the calculation of patent term adjustment.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b). (This is true even in this instance where a request for continued examination (RCE) was filed. The computer will not undertake the § 1.703(b) calculation until the actual date of issuance of the patent has been determined. Accordingly, it is still too soon to make a determination as to

the correctness of any period of adjustment that will or will not be entered pursuant to § 1.703(b)).

Applicant is given TWO (2) MONTHS from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Applicant may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Rather than file the request for reconsideration of Patent Term Adjustment at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term pursuant to 37 CFR 1.705(d). The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent and accordingly, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent.

It is acknowledged that applicant is correct that any period of adjustment will be entered in light of 35 U.S.C. 154(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including –

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

It is noted that a Request for Continued Examination (RCE) was filed in this application on March 17, 2008.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

To the extent that applicant requests review of the patent term adjustment pursuant to their duty of good faith and candor, the request is GRANTED.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is zero (0) days, including 157 days of applicant delay. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On April 16, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 0 days, including 62 days of applicant delay. Applicant discloses that an additional period of adjustment of 97 days should have been entered in connection with the filing of a response after non-final on February 15, 2007. In addition, as applicant filed the request for continued examination (RCE) on March 17, 2008 (and not March 16, 2008), the period of reduction associated with the RCE should have been 30 days, not 29 days.

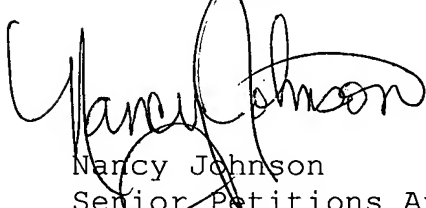
For the most part, applicant is correct. The record confirms that the RCE was filed on March 17, 2008, and therefore, the period of reduction pursuant to 37 CFR 1.704(b) is 30 days. Further, the response filed on November 13, 2006 contained an omission (See Notice of Noncompliant Amendment mailed February 8, 2007). On February 15, 2007, applicant filed a response correcting this omission. As such, pursuant to 37 CFR 1.704(c)(7), a period of reduction of 94 days (not 97) should have been entered for the period beginning the day after a reply containing an omission was filed, November 14, 2006, and ending on the date of filing of the response correcting the omission, February 15, 2007.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is 0 days (including 157 days of applicant delay).

The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue

Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name and title.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

PTA Calculations for Application: 10/606131

Application Filing Date:	06/24/2003	PTO Delay (PTO):	37
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	62
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	-95		

File Contents History

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95	09/05/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	29		
94	09/05/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		94	
87	04/16/2008	MAIL NOTICE OF ALLOWANCE			
86	04/14/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
85	04/14/2008	CASE DOCKETED TO EXAMINER IN GAU			
84	04/14/2008	ISSUE REVISION COMPLETED			
82	04/14/2008	DOCUMENT VERIFICATION			
81	04/14/2008	NOTICE OF ALLOWABILITY			
76	03/25/2008	DATE FORWARDED TO EXAMINER			
75	03/16/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
74	03/25/2008	DATE FORWARDED TO EXAMINER			
73	03/16/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)		29	64
72	03/25/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
71	03/16/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
70	03/17/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
69	02/13/2008	MAIL ADVISORY ACTION (PTOL - 303)			
68	02/08/2008	ADVISORY ACTION (PTOL-303)			
67	01/11/2008	AMENDMENT AFTER FINAL REJECTION			
66	01/16/2008	DATE FORWARDED TO EXAMINER			
65	01/11/2008	AMENDMENT AFTER FINAL REJECTION			
64	11/16/2007	MAIL FINAL REJECTION (PTOL - 326)			
63	11/13/2007	FINAL REJECTION			

62	08/28/2007	DATE FORWARDED TO EXAMINER			
61	08/22/2007	RESPONSE AFTER NON-FINAL ACTION			
60	08/27/2007	CORRESPONDENCE ADDRESS CHANGE			
59	08/27/2007	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
58	06/04/2007	MAIL NON-FINAL REJECTION			
57	05/29/2007	NON-FINAL REJECTION			
56	02/26/2007	DATE FORWARDED TO EXAMINER			
55	02/15/2007	RESPONSE AFTER NON-FINAL ACTION			
54	02/08/2007	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
53	02/05/2007	MISCELLANEOUS ACTION WITH SSP			
52	11/29/2006	DATE FORWARDED TO EXAMINER			
51	11/13/2006	RESPONSE AFTER NON-FINAL ACTION		3	50
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44	03/10/2006	CASE DOCKETED TO EXAMINER IN GAU			
43	11/03/2005	DATE FORWARDED TO EXAMINER			
42	10/31/2005	APPEAL BRIEF FILED			
41	09/14/2005	NOTICE OF APPEAL FILED		28	35
40	09/14/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
39	07/27/2005	MAIL ADVISORY ACTION (PTOL - 303)			
38	07/25/2005	ADVISORY ACTION (PTOL-303)			
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36	07/06/2005	AMENDMENT AFTER FINAL REJECTION			
35	05/17/2005	MAIL FINAL REJECTION (PTOL - 326)			
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28	09/23/2004	DATE FORWARDED TO EXAMINER			
27	09/16/2004	RESPONSE TO ELECTION / RESTRICTION FILED			
26	09/16/2004	WORKFLOW INCOMING AMENDMENT IFW			
25	08/18/2004	MAIL RESTRICTION REQUIREMENT			
24	08/16/2004	REQUIREMENT FOR RESTRICTION / ELECTION			
23	06/10/2004	CASE DOCKETED TO EXAMINER IN GAU			
22	01/07/2004	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
21	01/07/2004	NEW OR ADDITIONAL DRAWING FILED			
20	12/15/2003	REFERENCE CAPTURE ON IDS			
19.7	12/15/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
19	12/15/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
18	12/19/2003	CASE DOCKETED TO EXAMINER IN GAU			
17	09/29/2003	OATH OR DECLARATION FILED (INCLUDING SUPPLEMENTAL)			
16	06/24/2003	PRELIMINARY AMENDMENT			
15	11/06/2003	APPLICATION IS NOW COMPLETE			
14	11/05/2003	APPLICATION RETURN FROM OIPE			
13	11/06/2003	APPLICATION IS NOW COMPLETE			
12	11/05/2003	APPLICATION RETURN TO OIPE			
11	11/04/2003	APPLICATION DISPATCHED FROM OIPE			
10	11/05/2003	APPLICATION IS NOW COMPLETE			
9	09/29/2003	ADDITIONAL APPLICATION FILING FEES			
8	09/29/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
7	09/15/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
4	08/20/2003	CASE CLASSIFIED BY OIPE			
3	08/20/2003	CLEARED BY OIPE CSR			
2	08/12/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	06/24/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION